

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>EL VASITO, INC.,</p> <p>v.</p> <p>Respondent:</p> <p>GUNNISON COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 50377</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on February 25, 2009, Diane M. DeVries and Karen E. Hart presiding. Petitioner was represented by Lynn R. Fitzgerald, Vice President of El Vasito, Inc. Respondent was represented by Thomas A. Dill, Esq. Petitioner is protesting the 2008 classification and actual value of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

Gunnison County Schedule No. R040014

The subject property consists of a 72.56-acre parcel classified as vacant land.

Petitioner’s witness, Zack Martin, President of El Vasito, Inc. testified that the subject property was purchased in 1948 together with other lands totaling 900 acres. For many years the property was grazed by sheep owned by the Martin family or a lessee, usually sometime during the time period of June through September each year. The subject property cannot be grazed year round due to severe winter weather.

Mr. Martin admits that no domesticated livestock grazing occurred on the subject property in 2005 and 2006 due to his determination that grazing would be detrimental to the property as there was a severe drought. Mr. Martin filled out the Agricultural Land Classification Questionnaire he received from the Gunnison County Assessor’s Office in February 2006. In the questionnaire Mr. Martin responded that no grazing had occurred on the subject property. The subject property was

not enrolled in any soil conservation plan during the relevant time period of 2005 through 2008. The subject property has always been grazing land and has never had any farming activities.

On September 3, 2007, Petitioner entered into a five-year lease with Mike and Mary Clarke for a consideration of \$5.00 per year. Mr. Martin testified that the lease rate was nominal as he felt pressured by Respondent to obtain evidence of agricultural use. Mr. Martin believes the Clarkes grazed sheep on the property after September 2007.

Petitioner did not present any evidence or testimony to dispute the assigned value based on a vacant land classification.

Petitioner is requesting a 2008 actual value of \$730.00 for the subject property, based on an agricultural grazing land classification.

Respondent's witness, Mr. George Lickiss, a Certified Residential Appraiser with the Gunnison County Assessor's Office, presented an indicated value of \$290,000.00 for the subject property as vacant land based on the market approach.

Respondent presented three comparable sales ranging in sales price from \$120,000.00 to \$144,500.00 and in size from 35.10 acres to 40.00 acres. After adjustments were made for land cover, the sales ranged from \$3,740.00 to \$4,116.00 per acre.

Mr. Lickiss testified that a field inspection of the subject property was conducted in late summer 2005, and there was no evidence of grazing. Based on the physical inspection and Mr. Martin's responses on the questionnaire, the subject property was classified as vacant land effective tax year 2006. Petitioner appealed the reclassification and/or the valuation in 2006, 2007, and 2008.

Mr. Lickiss inspected the subject property in September 2008. He saw no evidence of any grazing over the past several years; there was lush grass, there were no livestock dropping or trails, and there were no footprints or muddied water source. The subject property is not fenced on the property line adjoining the road, and the fencing adjoining the Curecanti National Recreation Area, Blue Mesa Reservoir, is in disrepair.

Regarding the lease with the Clarkes, Mr. Lickiss testified that the Assessor's Office will take it into consideration for future years. However, the Assessor's Office has to date not observed any grazing activities.

Respondent's witness, Mr. Kyle Hooper, designee for JoAnn Groff, Property Tax Administrator, testified that the Property Tax Administrator believes that the Gunnison County Assessor properly classified the subject property, as noted in Respondent's Exhibit 4.

Respondent assigned an actual value of \$235,820.00 to the subject property for tax year 2008.

Respondent presented sufficient probative evidence and testimony to prove that the subject property was correctly classified and valued for tax year 2008.

CRS section 39-1-102(1.6)(a) states:

“Agricultural land”, whether used by the owner of the land or a lessee, means one of the following: (I) A parcel of land, whether located in an incorporated or unincorporated area and regardless of the uses for which such land is zoned, that was used the previous two years and presently is used as a farm or ranch, as defined in subsections (3.5) and (13.5) of this section, or that is in the process of being restored through conservation practices. Such land must have been classified or eligible for classification as "agricultural land", consistent with this subsection (1.6), during the ten years preceding the year of assessment . . . For purposes of this subparagraph (I), a parcel of land shall be “in the process of being restored through conservation practices” if: The land has been placed in a conservation reserve program established by the natural resources conservation service pursuant to 7 U.S.C. secs. 1 to 5506; or a conservation plan approved by the appropriate conservation district has been implemented for the land for up to a period of ten crop years as if the land has been placed in such a conservation reserve program.

It is undisputed that the subject property is not a farm. Although Mr. Martin testified that he was allowing the subject property to rest during drought conditions, the subject property was not enrolled in a conservation plan. Therefore the classification of the subject property rests on its ability to meet the definition of a ranch.

CRS section 39-1-102(13.5) states:

‘Ranch’ means a parcel of land which is used for grazing livestock for the primary purpose of obtaining a monetary profit. For the purpose of this subsection (13.5), “livestock” means domestic animals which are used for food for human or animal consumption, breeding, draft, or profit.

Petitioner does not dispute that domesticated livestock did not graze the subject property during 2005 or 2006. Therefore the subject property cannot meet the definition of agricultural land as noted above as it was not used for the two years prior to the current year of 2008.

ORDER:

The petition is denied.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of CRS § 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of CRS § 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

CRS § 39-8-108(2) (2008).

DATED and MAILED this 28th day of April 2009.

BOARD OF ASSESSMENT APPEALS

Diane M. DeVries
Diane M. DeVries

Karen E. Hart
Karen E. Hart

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

H. Flannery
Heather Flannery

